

2016 Arbitration Awards - Minnesota B.M.S.

May 18, 2016

Summary of Arbitration Awards listed on the Bureau of Mediation Services' web site (<http://www.mn.gov/admin/bms/arbitration/awards/>).

"Sustained" means the grievance prevails overturning the original action. "Denied" means the original action prevails.

May, 2016

| BMS # | Employer/Union | Arbitrator | Issue | Details | Award* | Basis/Argument |
|----------|---|----------------|------------------------------------|--|--------|---|
| 15PA0671 | Blaine, City of Law Enforcement Labor Services, Inc. | Jeffrey Jacobs | Past Practice Insurance Opt Out | City has 20 yr practice re paying for opt outs. Union repudiated practice, seeking full pay, but did not negotiate new language. | Denied | Contract silent, paymnts rely on practice. Expansion requires new language. Discussion on Past Practice. |
| 15PA0696 | Dakota County MN Public Employees Association | Jeffrey Jacobs | Written Reprimand | Jail Lt. failed to notify his supervisor SRT Unit was called out. Also failed to report and investigate use of force. | Denied | U claimed SRT corporal should have made use of force report - but, Lt. is responsible to see that report was written. |

April, 2016

| BMS # | Employer/Union | Arbitrator | Issue | Details | Award* | Basis/Argument |
|----------|--|----------------|---------------------------------|---|---|--|
| FMCS | Boise White Paper LLC United Steelworkers Local 159 | Richard Beens | Temp assignment below class. | EE temporarily assigned to lower job to fill in for vacations. Received regular pay. | Denied | Management right. Neither contract nor practice prohibits assignments. |
| 15PA0346 | Goodhue County Law Enforcement Labor Services, Inc. | Richard Dunn | Injury on Duty Past Practice | Failure to pay difference between Work comp & regular pay. ER charged sick account to make up difference. | Sustained | Relied on past practice. Union repudiated practice. Discussion on practice and how to repudiate. |
| 16PA0068 | MN, State of - Crosswinds & Perpich State Residential Schools Ed Assoc. | Stephen Befort | Pay during School Breaks | Teachers told they must use vacation to be paid for winter & spring breaks vs being allowed to work. | Sustained | Practice allowed teachers to work for additional pay and can't be unilaterally changed. Discussion on inferred practice. |
| 15PN0673 | Ramsey County (Interest Award) Law Enforcement Labor Services, Inc. | James Lundberg | Interest | Deputies. Wages: '15-2%, '16-2.5%, '17-2.6% - both. Market adjustment: 15-1.2\$, '16-1%, '17-1% - u (e-0%). | 2015 - 3.2% 2016 - 3.5% 2017 - 3.6% | Wages based on pattern. Market adj.- external; pay equity predicted pay; and Commander Feb 2016 award for 3.2%. |
| 16PA0351 | Rosemount, City of Law Envorcement Labor Services, Inc. | Andy Roberts | Termination | Ee pointed his laser equiped pistol at a co-worker. Inconsistent & incomplete statement given. U challenged there was no Garrity warning or questioning. | Denied | EE provided volluntary written statement that was inaccurate. Serious misconduct does not required progressive discipline. |
| 16PA0396 | Spirit Mountain Recreation Authority AFSCME Council 5 | Jeffrey Jacobs | 3 day suspension | Refusal to wear footwear after being told to do so & rude/unprofessional behavior toward her manager. Occurred before her shift so ee claimed she was a customer. | Denied | General obligation to observe plant rules. Swearing at supervisor was determining factor. Discussion on nexus to work place of off duty conduct. |
| 16PA0231 | Traverse County AFSCME Council 5 | Joseph Daly | Termination | Deputy Auditor/Treasurer used postage meter without reimbursing County. | 12 mo susp. | Lack of clear & convincing evidence. Casual & lax practice re postage meter. |
| 15PA0792 | University of Minnesota MN Public Employees Association | Harley Ogata | Vac/Comp time PRHCSP | Officer leaving for another job unable to use vac/comp time due to understaffing so money place into PRHCSP. | Denied | Clear language in MOU. EE also given opportunity to extend vacation in Nov. but refused. |

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| AAA | Xcel Energy, Inc. IBEW Local 23 | Joseph Daly | Temporary Vacancies | ER failed to fill 2 vacancies at its garage due to vacation & illness. U seeking OT. | Denied | Staffing is a management right. Union claimed past practice but no evidence. |
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March, 2016

| BMS # | Employer/Union | Arbitrator | Issue | Details | Award* | Basis/Argument |
|----------|---|--------------------|-------------|---|------------------------------|--|
| 15PA0970 | Cook Hospital AFSCME Council 65 | Richard Beens | Termination | Nursing assistant told nursing home patient he was pissed because he had to clean him. | 15 day susp. | Mistreatment of a vulnerable adult. Procedural violations at Loudermill meeting. Similar Appellate Court cast. |
| 15PN0566 | Hutchinson, City of (Interest Award) MN Public Employees Association | Stephen Befort | Interest | Police. Wages-u (u-3,3; e-2,2); Shift Differential-n-e; OT-count vac as hours worked-n-e; Language-eligible for wage increase despite discipline-u. | 2015 - 2.25% 2016 - 2.25% | Wages external average. Shift Differential & OT lacked compelling reasons for change. Language-existing practice. Discussion of Arbitration Standards. |
| ??? | MN, State of, Dept. of Human Services MN Assoc.of Professional Employees | Steven Befort | Termination | Chaplain at Recovery center in Brainerd Failed to cooperate with background study. | Split | U claimed confusion regarding order. Returned to work but no back pay. |
| AAA | N.S.P. d/b/a Xcel Energy Inc. IBEW Local 160 | Christine VerPloeg | Overtime | Work crew are comprised of Benefit & non-benefit (Union bench) ees. U feels only benefit employees should receive OT. | Sustained | Despite 30 yr practice, contract language only applies to benefit employees. |
| 16PA0124 | Ramsey County Law Enforcement Labor Services, Inc. | Richard Anderson | Termination | Deputy arrested for DUI 3/8/14, pled on 2/13/15, given 25 day susp. on 6/19/15. Arrested for Gross Misd. DUI on 6/6/15. Terminated on 6/20/15 | 9 mo. Susp. | Delay in suspension on 1st DUI while waiting for the court case raised due process concerns on subsequent termination. Returned with no backpay. |
| 16PA0388 | St. Paul, City of International Union of Painters Council 82 | John Johnson | Union work | Retired painter called back to train new painter on paint striping machine. Hired as a machinist so painter pension not effected. | Sustained | U seeking OT for active painter, but his current duties create time conflict. ER ordered to pay U dues during training. |

February, 2016

| BMS # | Employer/Union | Arbitrator | Issue | Details | Award* | Basis/Argument |
|----------|--|---------------------|------------------|---|--------------------------|--|
| 15PN0621 | Carver County (Interest Award) AFSCME Council 65 | Charlotte Neigh | Interest | Attorneys. PTO donation-n-e. Severance update-e; wages '15-0%, '16-2%-e (u-5%, 2016 - 2.0% 5%);performance pay-up to 4.25%-e (u-7%), increase after prob-u; prorating merit-n-u; add language on eligibility for merit-n-u; delete obsolete language re PFP plan-y-e. | 2015 - 0% 2016 - 2.0% | PTO donation-not fully developed, failed to show need. Severance-eliminates obsolete language, Wages&merit-pattern, Remaining awards based on internal patterns. |
| 15PA0855 | Chaska, City of Law Enforcement Labor Services, Inc. | Richard John Miller | Termination | Officer used racial profiling in making traffic stops, manipulative conduct with county attorney & lied during investigation. | Denied | Giglio-impaired due to untruthful answers during Garrity. Co. will not accept his testimony in criminal cases. |
| 15PA0051 | ISD 2889, Lake Park - Audubon Education MN - Lake Park, Audubon | George Latimer | Lane Advancement | Superintendent approved credits for lane advancement, not knowing they were professional development, not graduate level courses | Sustained | Credits were approved as required by the CBA. Note: current negotiation attempt to clarify language doesn't mean language says the opposite. |

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|----------|--|------------------|-------------------------------|--|---|---|
| 15PA0631 | Metro Council Amalgamated Transit Union Local1005 | Jeffrey Jacobs | Termination | Policy calls for termination when driver has 4 chargeable accidents in 36 months. | Denied | 13 years service doesn't mitigate. Policy valid and has been consistently applied. |
| 15PN0624 | Nobles County (Interest Award) Teamsters Local 320 | Rooand Toenges | Interest | ER implemented a new pay plan & offered the awarded wages. U seeking additional \$1.50 hr. shift pay for jail- no. | 2015 - 1% 2016 - 2.25% 2017 - 2.5%; | Internal pattern; no one else in Co. has shift pay; Miller Jan 2016 did not award shift pay to Sergeants. |
| 16PA0037 | Ramsey County Teamsters Local 320 | James Abelsen | Voluntary Move | Correction Officer 2 moved to Probation Officer 1 at a lower start, but a higher top. U claims it is a promotion so must start higher. | Denied | A voluntary reduction by terms of contract and Personnel Rules. |
| | | | Timeliness | Not filed within 21 days. | | ER failure to object constitutes a waiver. |
| 16PN0020 | Ramsey County (Interest Award) Law Enforcement Labor Services, Inc. | James Lundberg | Interest | Commanders.'15-2%-e(u-3%),'16-2.5%-e(u-4%),'17-2.6%-e(u-5.1%), increase POST lic.pay-n-e; Mkt adj. '15-3.2%-u | 2015 - 2% 2016 - 2.5% 2017 - 2.6% | Wages-internal pattern. Market adjtmnt 3.2% based on pay equity underpaymnt. Award compares cities to counties. |
| 16PA0189 | Red Wing, City of AFSCME Council 65 | Richard Anderson | Sick Leave, non-family member | Can sick leave be used for girlfriends Doctor appointment? | Sustained | Immediate family includes "bona-fide permanent member of household". |

January, 2016

| BMS # | Employer/Union | Arbitrator | Issue | Details | Award* | Basis/Argument |
|----------|---|----------------|-------------|--|--------------|--|
| 15PN0652 | Clearwater County (Interest Award) Teamsters Local 320 | Jeffrey Jacobs | Interest | Communication officers. ER seeking to change 65/35 split for family Insurance to the ER's 50/50 pattern. | No change | No quid pro quo nor compelling reason for change. 2 prior arbs supported the Union. (Teamsters have own ins.plan). |
| 15PN0458 | Nobles County (Interest Award) Teamsters Local 320 | Richard Miller | Interest | Jail Sgts. seeking shift differential. | Not awarded. | No quid pro quo nor compelling need & no one else in county has benefit. |
| 16PA0170 | Metro Transit Amalgamated Transit Union 1005 | Susan Bauman | Termination | Bus driver making a right turn, struck a bicycle rider. Union didn't dispute driver was responsible. | 60 day susp. | 50% of those involved in similar accidents were returned under LCA's. ER did not provide sufficient evidence showing why this was different. 9 yr. ee with previous LCA that expired more than 3 yrs ago therefore could not be used in this case. |